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A GREAT NATIONAL PROBLEM.

Judge Black's Views on the Internal Commerce Question.

The Special Committee on Railroad Transportation of the New York Chamber of Commerce addressed a series of questions to prominent men in various parts of the country in regard to the right of railroads to regulate prices, and to decide other topics raised in considering the subject of internal commerce. The following is the reply of Judge J. S. Black:

Yonk, Pa., Nov. 16, 1880.

Committee on External Transportation of the New York Chamber of Commerce.

GENTLEMEN: You propose a movement in favor of some legal regulation which will compel railway companies to perform their duties to the public on longer terms.

I will answer your questions as directly as possible, but without observing the order in which you put them.

You desire above all things to be just. The legally vested rights of railway companies, like other rights of private property, are sacred, and no violation of them comes within the scope of your design.

But on this question railroad men misunderstand their situation. They believe, or pretend to believe, that railways are the property of the companies authorized to run them, which is a cardinal error, and the parent of much false argument.

A public highway cannot be private property, and a railroad laid out and built by the authority of the State for the purpose of commerce is as much a public highway as a turnpike road, canal, or navigable river.

It is the duty of the State to promote intercourse and trade.

Highways, therefore, is the best sort through her territory. To this end she may take land and materials, which is an exercise of the power of eminent domain.

She can build a railroad at her own expense, using the direct agency of her own officers, and after it is built she can make it free to all comers, or reimburse the cost by a special tax on individuals who have occasion to use it. She can delegate the taking and taxing powers to a committee of a named person; and that is what she always does when she grants a railroad charter. But in either case, the road, the road belongs to the State, and all the people have a right to use it upon compliance with necessary regulations and payment of the proper tax.

The corporations who have got into the habit of calling themselves the owners of the railroads have no proprietary right, title, or claim to the roads themselves, but a mere franchise annexed to and exercisable thereon. They are the agents of the State for the performance of a public duty.

If the franchise be forfeited or surrendered, or if it expire by efflux of time, the State takes possession of the road and runs it herself, or employs new agents. The company cannot keep the road any more than an outgoing collector or a port can appropriate to himself the Custom House where he holds his official work.

The State, having need for a public highway at a particular place, makes a contract with a corporation to open and put it in condition to be used; and by way of reimbursing the builders and operators, she authorizes a tax upon those who travel or carry merchandise over it.

But this tax must be reasonable, just, uniform, prescribed, and fixed, so that every citizen may know beforehand exactly how much he must pay, and so that, when he pays or tenders the proper amount, he will actually receive a fair price for the services rendered.

The public has a right to use a public highway, and the public has a right to regulate its use.

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